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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRAIG F. MONTEILH, an
individual,

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION, a government
entity; IRVINE POLICE
DEPARTMENT, a government
entity; RON CARR, an
individual; BARBARA WALLS, an
individual and DOES 1 to 100,
inclusive,

Defendants.

Case Number:
SACV10-00102-JVS(RNBx)
Hon. James V. Selna

**MOTION TO SET ASIDE
CONVICTION OF PLAINTIFF
CRAIG F. MONTEILH
AND/OR PETITION FOR
HABEAS CORPUS**

Date: March 21, 2011
Time: 1:30 p.m.
Dept. 10C

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on March 21, 2011, at 1:30 p.m., or as soon thereafter as counsel may be heard, defendant the Federal Bureau of Investigation will bring on for hearing the within Motion to Dismiss before the Honorable James V. Selna in Courtroom 10C of the Ronald Reagan Federal Building and U.S. Courthouse, 411

1 West Fourth Street, Santa Ana, CA 92701-4516. Plaintiff
2 respectfully moves this Court for an Order, pursuant to 28 USC
3 2554, U.S. Constitution Article One, Section 9, and applicable
4 common law. The Motion is made on the grounds that the State
5 Court lacked jurisdiction over Plaintiff to convict him due to his
6 Federal immunity to engage in undercover operations with the FBI
7 and Joint Terrorism Task Force. Mr. Monteilh was the principle
8 operative on a national security operation. Further, the FBI and
9 United States forced Mr. Monteilh to enter into a plea agreement to
10 maintain operational security of Operation Flex, thus causing him
11 to unconstitutionally suspend his rights to habeas corpus.

12 This Motion is based upon this Notice of Motion and Motion;
13 the Memorandum of Points and Authorities attached hereto; and
14 any further arguments, evidence and grounds as may be advanced
15 in the future.

16 KROLIKOWSKI LAW FIRM
17

18 Dated: February 15, 2011

19 Adam J. Krolikowski, Esq.
20 For Plaintiff Craig F. Monteilh
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I.

INTRODUCTION

The FBI engaged in “Operation Flex,” which was initiated pursuant to Executive Order 12356. ASAC Barbara Walls was in charge of Operation Flex, directing it through the Orange County Joint Terrorism Task Force (including Ronald Carr, Frough Jahid and the Irvine Police Department) and Plaintiff Craig F. Monteilh. During Operation Flex, a line was crossed whereby the FBI and the named Defendants exercised their powers over Plaintiff Monteilh in an unconstitutional manner, ending in suspension of his right of habeus corpus and wrongful conviction and incarceration. To begin to right the wrong, Mr. Monteilh motions the court to set aside his conviction and/or grant habeus corpus.

II.

JURISDICTION AND VENUE

1. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because Plaintiff’s claims arise under federal law and the U.S. Constitution. Jurisdiction over the FBI is pursuant to 28 U.S.C. § 1346 and 28 U.S.C § 2679.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (e); the acts and omissions alleged herein occurred in this district.

3. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 2254, et seq., U.S. Constitution Article One, Section 9, and applicable common law.

4. If a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring

during its pendency would normally render the matter moot. Questions of general public concern do not become moot by reason of the fact that the ensuing judgment may no longer be binding on a party to the action. (*In re William M.* (1970) 3 Cal. 3d 16, 23-25, 89 Cal. Rptr. 33, 473 P.2d 737).

III. PARTIES

5. Plaintiff CRAIG F. MONTEILH is a United States citizen and a resident of the State of California. Mr. Monteilh was formerly employed by the Federal Bureau of Investigation ("FBI") in the capacity as an undercover informant.

6. Plaintiff is informed, believes and based thereon alleges that Defendant FBI is an agency of the United States Government. The FBI's headquarters is located at 935 Pennsylvania Avenue, N.W., Washington, DC 20535.

7. Plaintiff is informed, believes and based thereon alleges that Defendant Irvine Police Department is an agency of the City of Irvine, a municipal corporation under its present name, "City of Irvine," organized and operating pursuant to its Charter and the laws of the State of California.

8. Plaintiff is informed, believes and based thereon alleges that Defendant BARBARA WALLS is an individual employed by the FBI at all times relevant herein is an Assistant Special Agent in Charge at the Santa Ana branch office of the FBI located at 901 Civic Center Drive West, Santa Ana, California 92701.

9. Plaintiff is informed, believes and based thereon alleges that Defendant RON CARR is at all times relevant herein is a Detective with the Irvine Police Department.

IV.**STATEMENT OF FACTS**

10. Mr. Monteilh began working with the FBI as a voluntary undercover informant on or about early 2004 in the investigative program known as Violent Crime, and specifically concerning Narcotics operations, Murder for Hire, and Bank Robberies.

11. Mr. Monteilh worked with the FBI while directly supervised by his handlers Special Agent Tracy Hanlon and Special Agent Christopher Gicking.

12. The FBI initially tasked Mr. Monteilh to perform work concerning its Narcotics investigative program of the FBI Criminal Division in early 2004.

13. Mr. Monteilh was tasked by the FBI concerning the Narcotics investigative program to infiltrate drug trafficking groups and surreptitiously obtain information for use in prosecuting the individual group members for violations of the narcotics laws of the United States.

14. The Narcotics investigative program was in conjunction with local law enforcement, the Organized Crime Drug Enforcement Task Force (OCDETF), High Intensity Drug Trafficking Area (HIDTA) Programs, and other FBI counter-drug resources which focus on significant criminal enterprises.

15. The undercover informant work Mr. Monteilh performed under the Narcotics investigative program kept illicit drugs off the streets and resulted in arrests and convictions.

16. The FBI and its agents commended the work performed by Mr. Monteilh and increased his tasking orders to include the Murder For Hire investigative program.

1 17. The FBI Murder For Hire investigative program formally
2 began when Murder For Hire became a specific federal crime in
3 1958. The FBI typically works between 70 and 90 cases a year.
4 The Murder For Hire investigations range from spurned lovers out
5 for revenge to more organized gangs and crime groups that want to
6 take out rivals and snitches, with the ultimate goal being
7 prevention.

8 18. Mr. Monteilh, as part of his taskings as an undercover
9 informant for the FBI, engaged in a sting operation on or about
10 March 2006.

11 19. The sting operation involved the purchase, sale and
12 distribution of illicit performance enhancing drugs (commonly
13 referred to as steroids and human growth hormone) in the County
14 of Orange and the trafficking of marijuana smuggled through
15 Canada, targeting individual suspects including but not limited to
16 Roxanne Veal, Troy Zuccolotto, Youth Tech Incorporated, Danielle
17 Brinkman and Mary Brandolino Genovese. Mr. Monteilh was
18 gaining the confidence of individual suspects and, as he had done
19 in the past, was surveilling and gathering intelligence for the
20 eventual arrest and conviction of the suspects.

21 20. Mr. Monteilh's involvement in the sting operation was
22 placed on hold, however, because the FBI determined he was
23 needed for a special operation dealing with National Security and
24 Counterterrorism.

25 21. Mr. Monteilh was informed that the FBI is part of a vast
26 national and international campaign dedicated to defeating
27 terrorism, working hand-in-hand with partners in law
28 enforcement, intelligence, the military, and diplomatic circles to

1 neutralize terrorist cells and operatives here in the U.S. and to help
2 dismantle terrorist networks worldwide.

3 22. Specifically, Mr. Monteilh was informed that the work,
4 should he choose to accept the assignment, would be for the
5 purpose of infiltrating, surveilling and obtaining intelligence to take
6 down high priority targets including but not limited to USAMA BIN
7 LADEN, AYMAN AL-ZAWAHIRI, ABDELKARIM HUSSEIN
8 MOHAMED AL-NASSER, and ADAM GADHAN.

9 23. Mr. Monteilh, inspired by the opportunity to assist in
10 the protection of this great nation, agreed to be moved from
11 working with the Violent Crime investigative umbrella to the
12 National Security Branch, Counterterrorism Division, of the FBI.
13 Attached is Exhibit A, a true and correct copy of a Washington Post
14 article by national security correspondent Jerry Markon, referring
15 to law enforcement sources confirming Mr. Monteilh was trained
16 by the FBI and was promoted from drug and bank robbery cases
17 because his information was reliable and lead to convictions. See,
18 Ex. A pages 3 and 4.

19 24. The FBI assigned two new handlers, Special Agent Kevin
20 Armstrong and Special Agent Paul Allen with the FBI Orange
21 County Joint Terrorism Task Force, to deliver tasking orders to Mr.
22 Monteilh.

23 25. From July 2006 to October 2007, the FBI tasking orders
24 for Mr. Monteilh concerning the National Security Branch,
25 Counterterrorism Division, implemented him as a human
26 intelligence operative within a secret surveillance program aimed
27 at spying on the Islamic community in the counties of Orange, Los
28 Angeles and San Bernardino.

1 26. Mr. Monteilh was informed the secret surveillance
2 program was called "Operation Flex" and was initiated pursuant to
3 Executive Order 12356. The FBI tasked Mr. Monteilh with
4 assuming the identity of Farouk al-Aziz, a new Muslim convert of
5 Syrian and French descent, under code name "Oracle." A true and
6 correct copy of correspondence from Mr. Monteilh to SA Allen
7 evidencing the use of code name "Oracle" is attached as Exhibit B.

8 27. Operation Flex was implemented through the National
9 Security Branch of the FBI, using Mr. Monteilh as the center piece
10 of this covert surveillance program, to continue and extend its
11 post-9/11 wider surveillance program. A true and correct copy of
12 an article from the LA Times concerning SA Ropel's testimony that
13 Mr. Monteilh successfully infiltrated the Islamic community is
14 attached as Exhibit C.

15 28. The Assistant United States Attorney Dierdra Eliot gave
16 Mr. Monteilh special permission and immunity, by and through a
17 signed Federal document, to engage in jihadist rhetoric, including
18 but not limited to conducting terrorist operations, possessing
19 weapons and initiating conversations to further terrorist acts
20 against the United States.

21 29. Steven Kramer was FBI Legal Counsel for Operation Flex
22 and he personally dictated a Non-Disclosure Agreement which
23 references the privileges and immunities provided to Mr. Monteilh.
24 The Non-Disclosure Agreement was signed by Mr. Monteilh, Steven
25 Kramer and Barbara Walls on behalf of the FBI and the United
26 States. The Non-Disclosure Agreement is referenced in Exhibit D
27 by Henry Felix of the Office of the United States Attorney General.

28 30. Mr. Monteilh met with Special Agent Kevin Armstrong

1 and Special Agent Paul Allen to receive his tasking orders. Mr.
2 Monteilh was tasked by the FBI with infiltrating mosques in the
3 counties of Orange, Los Angeles and San Bernardino, a task he
4 successfully achieved.

5 31. Mr. Monteilh was tasked by the FBI with becoming
6 skilled in the Hadith and the Quran, the five pillars, and the sixth
7 pillar of Islam. Mr. Monteilh was tasked by the FBI with gaining
8 the confidence of high priority targets, leading prayer in the
9 mosques, dating Muslim women and engaging in sexual relations
10 with Muslim women. Mr. Monteilh was successful in performing
11 these tasks. A true and correct copy of the certificate of
12 achievement from Islamic Center of Irvine for Arabic language
13 study is attached as Exhibit E. A true and correct copy of a tasking
14 order from SA Allen to Mr. Monteilh regarding the tasks is attached
15 as Exhibit F.

16 32. On or about March 2, 2007, Mr. Monteilh received a
17 telephone call from his handler Special Agent Paul Allen. Mr.
18 Monteilh was informed by Special Agent Paul Allen that he had
19 received a call from an Irvine Police Officer assigned to the Orange
20 County Joint Terrorism Task Force informing him that there was
21 an active investigation on Mr. Monteilh for grand theft. Mr.
22 Monteilh was informed the complainants were the same person(s)
23 he had infiltrated in the March 2006 sting operation.

24 33. The FBI, through Special Agent Paul Allen, told Mr.
25 Monteilh that he would be receiving a call from Irvine Detective
26 Ron Carr and upon that call an interview would be scheduled by
27 the Detective.

28 34. The FBI, through Special Agent Paul Allen, further

1 instructed Mr. Monteilh that he was by no means to divulge his
2 status as a confidential informant to Detective Carr or invoke his
3 immunity because it would jeopardize “operational security” of
4 Operation Flex. Special Agent Paul Allen also told Mr. Monteilh
5 that the Irvine Detective had direct knowledge that Mr. Monteilh
6 was an active informant and was protected with immunity. See,
7 Exhibit G, Verified Responses to Request for Admission from City
8 of Irvine, Numbers 28, 59 and 61. See, Exhibit H, Verified
9 Responses to Request for Admission from Ron Carr, Number 100.

10 35. Mr. Monteilh explained to the FBI, through Special
11 Agent Paul Allen, that Detective Carr’s investigation concerns prior
12 work with the Narcotics investigative program of the Criminal
13 Division and that disclosing his confidential informant status to
14 Detective Carr would vindicate Mr. Monteilh as it had when such
15 investigations by local law enforcement occurred before.

16 36. On or about March 7, 2007, Detective Carr interviewed
17 Mr. Monteilh in Irvine, California. At the close of the interview,
18 Detective Carr told Mr. Monteilh, “I am going to get you.”

19 37. Detective Carr and Detective Jahid were Irvine Police
20 Department Intelligence Detectives (not Fraud Investigators) who
21 worked with the Joint Terrorism Task Force and FBI ASAC
22 Barbara Walls. See, Exhibit G, Response Numbers 4 and 19. In a
23 glaring contradiction Detective Carr denies he was an intelligence
24 detective for the Irvine Police Department. See Exhibit H, Response
25 Number 17. Detective Carr also denies Detective Frough Jahid was
26 an intelligence detective for the Irvine Police Department. See,
27 Exhibit H, Number 3.

28 38. Mr. Monteilh told the FBI about the interview and the

1 statements made by Detective Carr. The FBI again instructed Mr.
2 Monteilh to mislead detectives and outright lie to detectives for the
3 sake of "operation security" all the while assuring Mr. Monteilh the
4 grand theft case would be taken care of in the exit strategy and Mr.
5 Monteilh's immunity would cover all charges. The FBI continued
6 to give such assurances for several months.

7 39. While the grand theft investigation of Detective Carr was
8 being conducted, Mr. Monteilh was on probation through Case No.
9 KA059040 in the Superior Court of California, County of Los
10 Angeles, West Covina Courthouse. Mr. Monteilh's Probation
11 Officer, Officer Medina, was aware of Detective Carr's investigation
12 of Mr. Monteilh, but told Mr. Monteilh's handlers he would not
13 arrest Mr. Monteilh because he knew Mr. Monteilh's involvement
14 was that of an FBI informant. Special Agent Paul Allen also
15 explained to Officer Medina that Mr. Monteilh was working on a
16 national security operation and was protected by immunity.

17 40. Mr. Monteilh, nonetheless, was concerned about
18 remaining on probation and went to the West Covina Courthouse
19 on April 13, 2007, to ask for early termination of his probation,
20 which was denied. Mr. Monteilh reported this to his FBI handlers.
21 Thereafter, Special Agent Kevin Armstrong (a former Assistant
22 United States Attorney) called Los Angeles County District Attorney
23 Steve Cooley directly to have Mr. Monteilh's probation terminated
24 early. Mr. Monteilh was informed that this was necessary because
25 any felony investigation of a probationer automatically disqualifies
26 them from consideration for early termination of probation.

27 41. On August 20, 2007, Deputy District Attorney Linda A.
28 Chilstrom moved on behalf of the People of the State of California

1 for early termination of the probation of Mr. Monteilh, stating that
2 Mr. Monteilh had given “very, very valuable information that has
3 proven essential in an FBI prosecution.” A true and correct copy of
4 the hearing transcript terminating the probation of Mr. Monteilh is
5 attached hereto as Exhibit I.

6 42. The undercover informant work Mr. Monteilh performed
7 under Operation Flex resulted in arrests and prosecutions,
8 including but not limited to Ahmadullah Sais Niazi (who was later
9 released, possibly based on the FBI’s handling of his case). Mr.
10 Monteilh’s role as an informant was revealed by testimony of
11 Special Agent Thomas J. Ropel III at the bail hearing of
12 Ahmadullah Sais Niazi. (Ahmadullah Sais Niazi is a suspected
13 terrorist for allegedly sending support to the Mujahadeen in
14 Afghanistan; See Exhibit J with statements from US Attorney
15 Dierdra Eliot.

16 43. During the same time period, in connection with
17 Operation Flex, the Irvine PD Intelligence and the OC-JTTF ,
18 Detective Jahid interviewed suspected terrorist Ahmadullah Sais
19 Niazi in the spring of 2007. See, Exhibit G, Response Number 6.

20 44. Part of the information discovered by Mr. Monteilh also
21 concerned the storage of suspected bomb making materials at a
22 certain mosque, which Mr. Monteilh reported to Special Agent
23 Kevin Armstrong, Special Agent Paul Allen and Assistant Special
24 Agent in Charge Barbara Walls.

25 45. Mr. Monteilh is informed that Assistant Special Agent in
26 Charge Barbara Walls did not act on the information concerning
27 bomb making materials for over three (3) weeks. Mr. Monteilh is
28 informed that when Assistant Special Agent in Charge Barbara

1 Walls finally obtained the necessary warrants to investigate the
2 bomb making materials, they were no longer there. Mr. Monteilh
3 is informed that Assistant Special Agent in Charge Barbara Walls
4 was embarrassed and instead of accepting responsibility for her
5 error in judgment, called Mr. Monteilh a liar. Mr. Monteilh is
6 informed it is at that point that Assistant Special Agent in Charge
7 Barbara Walls determined she would remove Mr. Monteilh from
8 the FBI Counterterrorism program and thereafter began to
9 conspire with Detective Ron Carr to set Mr. Monteilh up for felony
10 prosecution and conviction.

11 46. On or about mid-March 2007, Detective Carr had been
12 instructed through members of the Orange County Joint Terrorism
13 Task Force at the Irvine Police Department not to pursue the grand
14 theft case against Mr. Monteilh because he was an asset. See
15 Exhibit K, City of Irvine's Answer to the Complaint, page 3,
16 paragraph 9. On or about September 17, 2007, Assistant Special
17 Agent in Charge Barbara Walls communicated with Detective Carr
18 and gave him the "green light" to proceed with seeking the arrest of
19 Mr. Monteilh, despite their knowledge of his status and history as
20 an FBI informant.

21 47. Detective Carr recontacted Mr. Monteilh on or about
22 September 24, 2007, and taunted him, saying I can arrest you
23 whenever I want for violating your probation. Detective Carr
24 became furious when he was informed by Mr. Monteilh that his
25 probation was terminated in August 2007.

26 48. Mr. Monteilh was concerned and asked the FBI, through
27 his handlers, how the exit strategy was going to be implemented,
28 including but not limited the payment of arrearage, severance,

1 readjustment to the community, new identity, removing the
2 restraining order and dissolving the grant theft investigation. The
3 FBI offered no response and the handlers said, "I don't know."

4 49. Mr. Monteilh is informed that in October 2007, Assistant
5 Special Agent in Charge Barbara Walls orchestrated the
6 diminishing of Mr. Monteilh's involvement in Operation Flex as the
7 high priority target Ahmadullah Sais Niazi already had a sealed
8 Federal indictment against him.

9 50. Mr. Monteilh is further informed that Assistant Special
10 Agent in Charge Barbara Walls became paranoid that Mr. Monteilh
11 would speak to the press about the illegal activities directed by
12 Assistant Special Agent in Charge Barbara Walls' office of the
13 National Security Branch of the FBI. Mr. Monteilh is informed that
14 the illegal activities Assistant Special Agent in Charge Barbara
15 Walls was concerned about coming to light were racial profiling,
16 religious profiling, instigating extremist rhetoric to entrap Muslims,
17 blackmailing Muslims to become informants, the breach of security
18 at Berlitz language center, Mr. Monteilh being armed to attend
19 mosques, Mr. Monteilh being told to engage in sexual relations
20 with Muslim women, misuse of surveillance devices in the Islamic
21 community and warrantless wiretapping.

22 51. In November 2007, the Irvine Police Department SWAT
23 team assembled in strike formation outside the home of Mr.
24 Monteilh. Mr. Monteilh, alarmed, quickly called his handlers on
25 the telephone and told them what he saw, and moments later
26 heard the words "stand down" and they left. Mr. Monteilh asked
27 what that was about and the handlers said, "I don't know." Mr.
28 Monteilh is informed that Detective Carr and Assistant Special

1 Agent in Charge Barbara Walls conspired and were responsible for
2 this SWAT team incident occurring.

3 52. On December 3, 2007, Detective Carr filed an “Order
4 Requiring Penal Code Section 1275.1 Hearing and Notification of
5 the District Attorney” for a warrant for the arrest of Craig F.
6 Monteilh. In the filing, Detective Carr requested that Deputy
7 District Attorney Yvette Patko be present at every hearing and that
8 a hold on the release from custody be placed on Mr. Monteilh. A
9 true and correct copy of the Arrest Application evidencing the
10 above-referenced requests made by Detective Carr is attached
11 hereto as Exhibit L.

12 53. Detective Carr denies he made the request for Yvette
13 Patko in his Answer. See, Exhibit K, page 3, paragraph 11, which
14 impeaches his credibility in this case.

15 54. Now, the District Attorney’s office has refused to
16 produce the criminal case file of Mr. Monteilh citing the federal
17 official information privilege, which is typically reserved for
18 national security. See, Exhibit M, a true and correct copy of a letter
19 from the Office of the District Attorney dated July 2, 2010.

20 55. The Public Defender’s case notes reveal the District
21 Attorney knew and possessed documentation that Mr. Monteilh
22 was an informant for the FBI, but was instructed by the FBI and
23 Barbara Walls not to dismiss the charges. The District Attorney
24 referred to Mr. Monteilh as a “snitch” and “operative,” then offered
25 him a plea bargain for 3 years in prison, but no enhancements
26 which were required by statute. See, Exhibit N, a true and correct
27 copy of case notes of Public Defender Matthew Missakian. Mr.
28 Monteilh is informed by FBI agent that Deputy District Attorney

1 Yvette Patko possesses documentation on FBI letterheads (several)
2 outlining his national security work, immunity from prosecution
3 and financial disclosures. This documentation is from the desks of
4 Special Agent Tracy Hanlon, her supervisor, Agents from Operation
5 Flex, and ASAC Barbara Walls. The documentation also reveals
6 the dissention between FBI field agents and FBI management, as
7 well as commending letters from Costa Mesa Detective Kim,
8 Deputy District Attorney/Assistant United States Attorney Joel
9 Williams, and a damning letter from ASAC Barbara Walls.

10 56. On December 12, 2007, Mr. Monteilh was surprised by
11 an arrest and search warrant at his home by Detective Carr and
12 Detective Jahid. Mr. Monteilh was arrested.

13 57. Mr. Monteilh was informed that the Deputy District
14 Attorney Yvette Patko was seeking a conviction and sentence of
15 5 years 8 months for Craig Monteilh. Mr. Monteilh's bail was set
16 at \$250,000 per the direction of Detective Carr and/or Assistant
17 Special Agent in Charge Barbara Walls. Mr. Monteilh is informed
18 that Assistant Special Agent in Charge Barbara Walls made
19 disclosure to Deputy District Attorney Yvette Patko of the financial
20 status and records of payment from the FBI to Mr. Monteilh.

21 58. Mr. Monteilh is informed that on the day of the
22 arraignment, Deputy District Attorney Yvette Patko went to lunch
23 with the complainant Danielle Brinkman, one of the suspects from
24 the sting operation from March 2006.

25 59. At the direction of Assistant Special Agent in Charge
26 Barbara Walls, Mr. Monteilh was visited by at the Orange County
27 Jail by Special Agent Kevin Armstrong (former Assistant United
28 States Attorney) and FBI Legal Counsel Steven Kramer. Mr.

1 Monteilh was instructed by the FBI not to take his case to trial
2 because he had signed a document FBI Legal Counsel Steven
3 Kramer referred to as the "Non-Disclosure Agreement" and would
4 face a lengthy time in Federal Prison if he did so. An effort to
5 enforce the Non-Disclosure Agreement is attached hereto as
6 Exhibit D, A true and correct copy of a communication from Henry
7 R. Felix, Associate General Counsel for the FBI, evidencing the
8 above-referenced "Non-Disclosure Agreement" that Mr. Monteilh
9 signed on October 5, 2007.

10 60. Mr. Monteilh's handlers SA Armstrong and SA Allen
11 instructed Mr. Monteilh to keep copies of documents, despite the
12 Non-Disclosure Agreement, because "he might need them in the
13 future" and then presented him with the OCJTTF Coin for their
14 appreciation of all the work he performed in Operation Flex. A
15 photograph which is a true and correct representation of the coin
16 is attached hereto as Exhibit O.

17 61. Mr. Monteilh was forced, under the color of authority by
18 Barbara Walls, the FBI and its agents, to not invoke his complete
19 and operational immunity, to plead guilty to grand theft, suffer a
20 felony conviction and endure sixteen (16) months in prison for
21 work performed at the direction of the FBI.

22 62. Mr. Monteilh was transported from the OC Jail by 6
23 sheriff's deputies assigned with the OCJTTF and driven to the FBI
24 Santa Ana office to be polygraphed while in wrist and leg
25 restraints. The polygraph was ordered by ASAC Walls, in
26 conjunction with the Irvine Police Department and Detective
27 Ronald Carr, and done without the knowledge of Mr. Monteilh's
28 defense attorney Matthew Missakian, Esq. (Mr. Monteilh was

1 represented by the Office of the Public Defender during that time)
2 and Mr. Monteilh did not waive the right to counsel.

3 63. Mr. Monteilh saw that Irvine Police Department
4 Detective Ron Carr and Detective Frough Jahid were present at the
5 polygraph examination. Mr. Monteilh is informed that Detective
6 Carr and Detective Jahid are assigned to the Intelligence Division
7 of the Irvine Police Department. Detective Frough Jahid was the
8 arresting officer of record for Mr. Monteilh. See, Exhibit P, a true
9 and correct copy of the Pre-Booking Record. It is also worth noting
10 that Detective Carr *denies* that Detective Jahid was present at Mr.
11 Monteilh's arrest. See, Exhibit H, response number 12. This is
12 another glaring inconsistency.

13 64. Mr. Monteilh is informed, believes and based thereon
14 alleges that Detective Carr and Detective Jahid were instructed by
15 Chief Maggard to be present at the polygraph and were both told
16 that Mr. Monteilh is an FBI informant.

17 65. Immediately prior to the polygraph starting, FBI legal
18 counsel Steven Kramer, Esq., informed Mr. Monteilh he had in his
19 possession a completed document which would cause the
20 immediate release of Mr. Monteilh from custody if he passed the
21 polygraph.

22 66. After the polygraph, FBI agent Kevin Armstrong brought
23 Mr. Monteilh lunch from Ralph's grocery store and informed Mr.
24 Monteilh that ASAC Barbara Walls was once again reneging on her
25 promises and he would have to go back to jail. Mr. Monteilh was
26 not shown the results of the polygraph.

27 67. Mr. Monteilh is informed by FBI agents that the
28 polygrapher told Agent Tracy Hanlon that Mr. Monteilh never

1 should have been polygraphed under such conditions and that Mr.
2 Monteilh has every legal right to sue the Bureau.

3 68. Later, the same day after the polygraph, the Irvine Police
4 Department officers went to speak with Otto Paul Burgi, Tyrone
5 Rye, Voicu Gruia, Christopher Aragon and Khalil Hamdan and
6 revealed the very information Mr. Monteilh had obtained from each
7 of them. At that point, Mr. Monteilh's life was placed in great
8 danger and he could do nothing to protect himself.

9 **V.**

10 **POINTS AND AUTHORITIES**

11 Plaintiff may seek to have his conviction set aside or habeas
12 corpus based upon 28 U.S.C. § 2254, et seq., U.S. Constitution
13 Article One, Section 9, and applicable common law. If a pending
14 case poses an issue of broad public interest that is likely to recur,
15 the court may exercise an inherent discretion to resolve that issue
16 even though an event occurring during its pendency would
17 normally render the matter moot. Questions of general public
18 concern do not become moot by reason of the fact that the ensuing
19 judgment may no longer be binding on a party to the action. (*In re*
20 *William M.* (1970) 3 Cal. 3d 16, 23-25, 89 Cal. Rptr. 33, 473 P.2d
21 737). In this case, the question of the law enforcement tactics of
22 the FBI, City of Irvine and District Attorney's office which result in
23 coerced guilty plea are an issue of broad public interest that is
24 likely to recur, the court may exercise an inherent discretion to
25 resolve.

26 Justice Souter's concurring opinion in *Heck v. Humphrey*, 512
27 U.S. 477, 499 (U.S. 1994), states the process of setting aside a
28 conviction "neatly resolves a problem that has bedeviled lower

1 courts [citations] and law students (some of whom doubtless have
2 run up against a case like this in law-school exams). The
3 favorable-termination requirement avoids the knotty
4 statute-of-limitations problem that arises if federal courts dismiss
5 § 1983 suits filed before an inmate pursues federal habeas, and
6 (because the statute-of-limitations clock does not start ticking
7 until an inmate's conviction is set aside)." *Id.* at 499.

8 In 1963, the Supreme Court set forth the "appropriate
9 standard" to be applied by a "federal court in habeas corpus" when
10 "the facts" pertinent to a habeas application "are in dispute."
11 *Townsend v. Sain*, 372 U.S. 293, 312. We held that when "the
12 habeas applicant was afforded a full and fair hearing by the state
13 court resulting in reliable findings" the district court "ordinarily
14 should . . . accept the facts as found" by the state-court judge. *Id.*,
15 at 318. However, "if the habeas applicant did not receive a full and
16 fair evidentiary hearing in a state court, either at the time of the
17 trial or in a collateral proceeding," we held that the federal court
18 "must hold an evidentiary hearing" to resolve any facts that "are in
19 dispute." *Id.*, at 312. We further "explain[ed] the controlling
20 criteria" by enumerating six circumstances in which such an
21 evidentiary hearing would be required: "(1) the merits of the factual
22 dispute were not resolved in the state hearing; (2) the state factual
23 determination is not fairly supported by the record as a whole; (3)
24 the fact-finding procedure employed by the state court was not
25 adequate to afford a full and fair hearing; (4) there is a substantial
26 allegation of newly discovered evidence; (5) the material facts were
27 not adequately developed at the state-court hearing; or (6) for any
28 reason it appears that the state trier of fact did not afford the

1 habeas applicant a full and fair fact hearing." *Id.*, at 313 (emphasis
2 added).

3 Three years later, in 1966, Congress enacted an amendment
4 to the federal habeas statute that "was an almost verbatim
5 codification of the standards delineated in *Townsend v. Sain*."
6 *Miller v. Fenton*, 474 U.S. 104, 111, (1985). That codification read
7 in relevant part as follows: "In any proceeding instituted in a
8 Federal court by an application for a writ of habeas corpus by a
9 person in custody pursuant to the judgment of a State court, a
10 determination . . . of a factual issue, made by a State court of
11 competent jurisdiction . . . , shall be presumed to be correct, unless
12 the applicant shall establish or it shall otherwise appear, or the
13 respondent shall admit --

14 (1) that the merits of the factual dispute were not resolved in the
15 State court hearing;

16 (2) that the factfinding procedure employed by the State court was
17 not adequate to afford a full and fair hearing;

18 (3) that the material facts were not adequately developed at the
19 State court hearing;

20 (4) that the State court lacked jurisdiction of the subject matter or
21 over the person of the applicant in the State court proceeding;

22 (5) that the applicant was an indigent and the State court, in
23 deprivation of his constitutional right, failed to appoint counsel to
24 represent him in the State court proceeding;

25 (6) that the applicant did not receive a full, fair, and adequate
26 hearing in the State court proceeding; or

27 (7) that the applicant was otherwise denied due process of law in
28 the State court proceeding;

(8) or unless . . . the Federal court on a consideration of [the relevant] part of the record as a whole concludes that such factual determination is not fairly supported by the record." § 2254(d) (emphasis added).

As is clear from the statutory text quoted above, and as the District Court correctly stated, if any "one of the eight enumerated exceptions . . . applies" then "the state court's factfinding is not presumed correct." See, *Jefferson v. Upton*, 130 S. Ct. 2217, 2221 (U.S. 2010)

Based upon the foregoing, Mr. Monteilh respectfully requests the Court set aside his conviction, and grant such other relief as the Court deems appropriate.

PETITION

69. This petition concerns a conviction.

70. Places of detention were:

- a. Orange County Main Jail
- b. Wasco State Prison
- c. Coalinga Community Correctional Facility

71. Place of conviction: Superior Court of California, County of Orange

72. Sentence: 16 Months State Prison

73. Conviction on which the petition is based:

- a. Grand Theft, 2 Counts

74. Nature of offenses involved (include all counts):

- a. Count 1, Penal Code § 487(a) - Grand Theft
- b. Count 3, Penal Code § 487(a) - Grand Theft

75. Case number: 07HF2373

76. Date of conviction: February 29, 2008

1 77. Date of sentence: February 29, 2008

2 78. Length of sentence counts:

3 a. 16 Months State Prison

4 79. Plea: Guilty

5 80. As discussed above, due to the Non-Disclosure Agreement
6 and fear of the threats made by the FBI and its agents, no prior
7 appeals or petitions for habeas corpus had been filed.

8 81. The grounds for this Petition are that Mr. Monteilh was
9 convicted in violation of the Constitution and laws of the United
10 States, specifically 28 U.S.C. § 2254, et seq., U.S. Constitution
11 Article One, Section 9, Amendment 5 to the U.S. Constitution and
12 applicable common law. As set forth in the above-stated facts, Mr.
13 Monteilh had federal immunity, but was forced to plead guilty to
14 alleged crimes from which he was immune. The FBI, through
15 Steven Kramer and Barbara Walls, orchestrated the arrest and
16 plea bargain of Mr. Monteilh leading to his conviction and
17 incarceration.

18 82. For the reasons stated above, Mr. Monteilh prays the Court
19 grant this Petition, or alternatively Motion to Set Aside Conviction,
20 and all relief to which he may be entitled in this proceeding.

21 KROLIKOWSKI LAW FIRM

22
23 Dated: February 15, 2011

24 
Adam J. Krolikowski, Esq.
For Plaintiff Craig F. Monteilh

25
26 I declare under penalty of perjury that the foregoing is true and
27 correct. Executed on February 15, 2011

28 
Craig F. Monteilh